

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,  
INC., et al.,

Defendants.

) CIVIL NO. CV03-00385 SOM-LEK  
) (Copyright)  
)

) **DECLARATION OF DAMIAN**  
) **CAPOZZOLA IN SUPPORT OF**  
) **DEFENDANT PCT'S OPPOSITION**  
) **TO PLAINTIFF WAYNE BERRY'S**  
) **MOTION IN LIMINE TO EXCLUDE**  
) **EXPERT TESTIMONY OF**  
) **JEFFREY KINRICH REGARDING**  
) **MATTERS NOT CONTAINED IN**  
) **HIS EXPERT REPORT**  
)  
)

) Judge: Hon. Susan O. Mollway

) Trial Date: January 24, 2006  
)

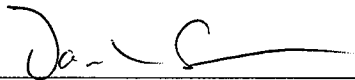
) Hearing Date: January 20, 2006

Hearing Time: 2:00 p.m.

I, DAMIAN D. CAPOZZOLA, declare that:

1. I am an attorney at the law firm of KIRKLAND & ELLIS, LLP, attorneys for Defendant PCT and am duly authorized to make this affidavit.
2. I am licensed to practice law in the State of California and have been admitted pro hac vice in this case. I know the following to be true through my work in this case, and if requested could and would competently testify as such.
3. Exhibit A contains a true and correct copy of the report prepared by Jeffrey Kinrich dated June 16, 2005.
4. Exhibit B contains a true and correct copy of Fleming's Trial Exhibit 231.
5. Exhibit C contains a true and correct copy of an email from D. Capozzola to T. Hogan dated July 8, 2005, 5:31 p.m. offering Jeff Kinrich for deposition.
6. Exhibit D contains a true and correct copy of emails documenting shipment of materials to Ueno.
7. Exhibit E contains a true and correct copy of the September 28, 2005 supplemental report submitted by Jeff Kinrich in this matter.

So sworn under penalty of perjury under the laws of the United States of America in Los Angeles, California, on January 10, 2005.

  
\_\_\_\_\_  
Damian D. Capozzola